

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Rachel Harban
Petitioner-Appellant,

v.

Warren County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-91-1589
Parcel No. 23-000-28-0440

On February 14, 2013, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.47A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Rachel Harban was self-represented. The Warren County Board of Review designated Assessor Brian Arnold as its representative. Both parties submitted evidence in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Rachel Harban, owner a property located at 9203 Van Buren Street, New Virginia, Iowa appeals from the Warren County Board of Review decision regarding her 2011 property assessment. According to the property-record card, the subject property is improved with a metal barn structure built in 2006. It has 1872 square feet with a 144 square-foot addition. The second floor of the barn has 864 square feet of living area. The site is 32.310 acres. The property's classification was changed from agricultural to residential in the 2011 assessment. It was valued at \$160,600.

Harban's petition to the Board of Review claimed there was an error in the assessment under Iowa Code section 441.37(1)(a)(4). However, her written statement essentially asserted the property

was misclassified under section 441.37(1)(a)(3). Harban did not request a hearing before the Board of Review. She did, however, provide a written statement on her petition indicating the “land has been leased for raising/training horses and growing hay.” She also included a lease agreement dated January 12, 2010, between herself and her business partner, John Hartney. The lease dictates the use of the subject property for “the purpose(s) of breeding, raising, and training horses.”

The record also includes a one-page survey from the Warren County Assessor’s office regarding uses of the subject property. Harban completed the survey on November 12, 2010. She identified livestock on the property including two calves and two pigs. On the form, she also noted that 28 acres of the subject site was being cropped for hay.

The Board of Review denied the petition.

Harban then appealed to this Board, reasserting her claim that the property is incorrectly classified residential. She asserts its proper classification is as agricultural realty.

At hearing before this Board, Harban testified regarding the use of the property. Harban testified it is used for baling hay; breeding, raising, and training horses; and for raising calves for food.

Harban’s appeal indicated she and her business partner, John Hartney, were in the process of filing paperwork for a DBA (doing business as). Harban provided detailed documentation of the horses that are being bred and trained on the property. She indicated that she currently has seventeen horses; it appears though that at least five of those horses were either born or purchased after the January 1, 2011, assessment date. Additionally she explained that some of the horses have been on the property longer, but their registration papers document only when she registered them with a breed association. She delayed registration on some of the horses to defer costs, as older horses are cheaper to register. They have bred five mares to start their paint horse and barrel racing horse-breeding program.

Harban explained that she and Hartney have been mowing the site and baling hay for feed. Although their hay crop has varied over the years depending on the weather, they have continued to invest in harvesting the hay by seeding the land. They also purchased a new tractor as a replacement for an older, less safe tractor she owned. The rationale behind the purchase of the new tractor was to make it safer to harvest hay on the property's steep topography.

Harban testified she has had feeder calves and pigs on the property in the past.

Hartney also testified on Harban's behalf. Hartney's testimony explained the horse breeding and training program, as well as the hay cropping, on the property. Hartney explained the horse market was strong ten years ago and horses sold for \$5000 to \$10,000 at that time. He identified the current market, however, as poor. He said it is not uncommon to give a horse away because then it is one less that has to be fed. Because the market is not currently strong, they are focusing on breeding quality horses and training them for *future sale* when the market picks up. Just recently, they sold one horse for \$1000.

Hartney explained that they had been "live breeding" the horses; however, they changed to artificial insemination because of the risks that can harm horses in a live breeding situation. Harban provided documentation to verify the purchase of a stud services for their mares (Exhibit 8). Hartney also noted that they are breeding better quality horses, and these good quality horses will bring in money. Hartney acknowledge that this endeavor is costing a lot to get going, but he believes that when they are done, they will have some of the finest horses in the country.

Hartney is also training some of the horses for the barrel racing circuit. He stated it takes four to five years to train horses for barrel racing. When they participate in barrel events with their trained horses, they have the potential to win \$2000 to \$3000 purses per competition, plus other items such as trailers or equipment.

Harban has been training horses for over thirty-five years, and we find him to be honest and knowledgeable regarding the training and selling of horses.

The Board of Review provided an aerial photo of the subject site, as well as two topography maps showing the contours of the site. It did not offer any witnesses or testimony.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* However, agriculturally classified property is valued based solely on productivity and net earning capacity. § 441.21(1)(e).

Harban asserts the property is misclassified and that its actual classification should be agricultural. The Iowa Department of Revenue has promulgated rules for the classification and

valuation of real estate. See IOWA ADMIN. CODE r. 701-71.1 et al. (2011). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” r. 701-71.1(1). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the bases of its primary use.” *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, agricultural property

shall include all tracts of land and the improvements and structures located on them which are in *good faith used primarily for agricultural purposes* except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for *intended profit*.

...

r. 701-71.1(3)(emphasis added).

Conversely, residential property

shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods.

r. 701-71.1(4).

To determine if the property’s correct classification, we must begin with the overarching principle that property is to be classified based on its *present use* and not its highest and best use. r.

701-71.1(3).

An agricultural activity is clearly taking place on this property. A majority of this property was being used for the rearing, feeding, and management of horses as of the assessment date. Numerous Iowa code sections define livestock to include horses and the horses here comply with the common understanding of the term livestock. §§ 166D.2, 169A.1, 172A.1, 172B.1, 189A.2; BLACK'S LAW DICTIONARY 953 (8th ed. 1999) (defining livestock as [d]omestic animals . . . that (1) are kept for profit or pleasure, (2) can normally be confined within boundaries without seriously impairing their utility, and (3) do not normally intrude on others' land in such a way to harm the land or growing crops."); see also *Polk County Bd. of Review v. Property Assessment Appeal Bd.*, No. 09-1542 (Iowa Court of Appeals, Aug. 11, 2010). Additionally, more than half of the property (approximately 20 acres) was being used for growing hay. While this hay is not sold, it is used to feed the livestock being raised on the property. Based on these facts, we find that the subject property is being used primarily for agricultural purposes within the contemplation of r. 701-71.1(3).

Further, we find this agricultural use is being done in good faith. We note that although "good faith" is not defined by the rule, the Iowa Courts have interpreted "good faith" to mean "honesty of intention" or "subjective honest belief." *Haberer v. Woodbury County*, 560 N.W.2d 571, 575 (Iowa 1997); *Garvis v. Scholten*, 492 N.W.2d 402, 404 (Iowa 1992). After hearing the testimony of Harban and Hartney, it is evident to this Board that they maintain an honest intention of raising and training horses for barrel racing and for eventual sale.

The final issue, and sometimes a difficult one, is whether there is intent to profit from the agricultural activity. The rule requires that the agricultural activity be undertaken in good faith with an intent to profit. r. 701-71.1(3). The evidence shows that neither Harban nor Hartney has yet realized a profit from raising, training, or selling horses on this property, except for recently selling one horse for \$1000. Rule 701-71.1(3) does not require actual profit, however, merely an intent to profit. Hartney's testimony established that their inability to profit up to this point is due, in part, to a diminished market

for horses. Moreover, this endeavor is fairly new and many new businesses have difficulty making a profit in their early stages, particularly when there is weak market demand. Hartney testified that it takes several years to raise and train horses before they can be sold and profits can be realized. It also takes several years to train horses to compete in barrel racing. Harban also testified that once these horses are trained and raced, they have the ability to win \$2000 to \$3000 per competition, and/or sell for as much as \$5000 to \$10,000 if the market returns to what it was several years ago. Based on this evidence, Harban has demonstrated a subjective intent to profit from the selling and training of these horses.

Finally, the fact that a residential dwelling is on the property does not disqualify the appellant from establishing the agricultural use of the remainder of the parcel. Iowa Admin. Code r. 701-71.1(3-4). We further note that the structure considered a “residential dwelling” on this property is actually the steel barn that has some living quarter finish on the second level. It is possible that since no other structures exist on the property, the lower portion of the barn is used to house the horses; however, no testimony was offered regarding this issue.

Harban and Hartney provided this Board with additional evidence than they provided to the Board of Review. Some of this evidence detailed horse and equipment purchases that occurred after the assessment date. Nevertheless, prior to the assessment date, the property was already being used for the same purpose. These subsequent investments further support Harban’s good faith intent to engage in this endeavor.

The Board of Review asserted that Harban is not demonstrating intent to profit because she has not filed a Schedule F, provided any business expenses or income, is not registered with any farm services agency, and has no farm number associated with the property. Additionally, it states the residence is rented for \$1100 month the property, therefore is used for human habitation. We note there is no requirement to file a Schedule F in order to be agriculturally classified. Likewise, there is

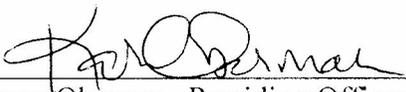
no requirement to register with any agency or file for a "farm number." Lastly, while there is building that is partly used as residence on the property, this does not dictate that the only use of the property is residential. Additionally, Hartney testified he pays Harban \$1100 per month to live on the property. This payment is not only for the dwelling, but also for unfettered access to the property to raise and train the horses, and harvest the hay.

Following Iowa law and administrative rules governing the classification of real estate, we find Harban's property is properly classified agricultural realty. The evidence and testimony is clear and undisputed that there are numerous horses being bred, raised, and trained on the subject property. It is not reasonable to believe that profit would be immediately realized on an animal that requires four to five years of training before it can be sold for a prime return.

THE APPEAL BOARD ORDERS that the January 1, 2011, classification of Harban's property is agricultural realty. In order to value the property as agricultural realty correctly, the Board of Review is ordered to determine the agricultural land value using the appropriate methods prescribed by law and report that value to this Board within twenty days of the date of this Order. Once those values are provided, this Board will enter a valuation order accordingly.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Warren County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

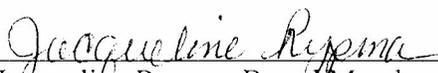
Dated this 9 day of March 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Member



Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>3-5</u> , 2013	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	